

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
*See* Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

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JAN -7 2011

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2010-0298-PR
	)	2 CA-CR 2010-0311-PR
Respondent,	)	(CONSOLIDATED)
	)	DEPARTMENT A
v.	)	
	)	<u>MEMORANDUM DECISION</u>
DANIEL LEE BAKER,	)	Not for Publication
	)	Rule 111, Rules of
Petitioner.	)	the Supreme Court
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause Nos. CR20042647 and CR20040488

Honorable Howard Fell, Judge Pro Tempore  
Honorable Jan E. Kearney, Judge

REVIEW DENIED

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Daniel Lee Baker

Phoenix  
In Propria Persona

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E S P I N O S A, Judge.

¶1 Pursuant to Rule 32.9, Ariz. R. Crim. P., Daniel Lee Baker separately petitions this court for review of the denials of his petitions for writ of habeas corpus filed in cause numbers CR20042647 and CR20040488. We consolidated these cases on our own motion because the two petitions largely raise the same issues. We deny review.

¶2 In CR20040488, CR20042647, and CR20040490, Baker was convicted after three separate jury trials of an aggregate of ten counts each of aggravated driving under the influence and aggravated driving with an alcohol concentration of .08 or greater, and one count of criminal damage. He was sentenced to a combination of concurrent and consecutive prison terms totaling 14.5 years. We affirmed his convictions and sentences in each of his appeals. *State v. Baker*, No. 2 CA-CR 2005-0066 (memorandum decision filed Feb. 15, 2007); *State v. Baker*, No. 2 CA-CR 2004-0442 (memorandum decision filed Nov. 29, 2006); *State v. Baker*, No. 2 CA-CR 2004-0352 (memorandum decision filed Sep. 27, 2006). And, in each case, the trial court has denied a previously filed petition for post-conviction relief, and we have denied relief on review. *State v. Baker*, No. 2 CA-CR 2009-0388-PR (memorandum decision filed Mar. 26, 2010); *State v. Baker*, No. 2 CA-CR 2009-0276-PR (memorandum decision filed Feb. 25, 2010); *State v. Baker*, No. 2 CA-CR 2008-0261-PR (memorandum decision filed Mar. 11, 2009).

¶3 In CR20042647 and CR20040488, Baker filed petitions for writ of habeas corpus requesting either a new trial or that his convictions and sentences be vacated because the Arizona Department of Corrections had, inter alia, destroyed legal papers belonging to him, confiscated legal mail, denied his requests for assistance by a paralegal, and provided an inadequate law library.<sup>1</sup> He also filed motions requesting the superior court “transmit” the record of his civil rights claim filed in federal court to the superior

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<sup>1</sup>Baker apparently also filed a habeas petition in CR20040490.

court, appoint him counsel, and “waive[]” formal requirements for filing his petition for writ of habeas corpus.

¶4 In CR20042647, Judge Fell determined Baker had not raised a valid habeas claim. Noting Baker’s claim could be characterized as a petition for special action or mandamus, Judge Fell declined to accept special action jurisdiction because Baker’s contentions were “largely fact-based.” Judge Fell did not explicitly rule on Baker’s other motions.

¶5 In CR20040488, Judge Kearney denied Baker’s motions, determined his petition did not raise a valid Rule 32 claim, and held he was not entitled to relief on his habeas claim. Judge Kearney also stated she would not consider Baker’s petition as a special action. Both judges denied Baker’s subsequent motions for rehearing, which they characterized as motions for reconsideration.

¶6 Baker then filed the instant petitions for review “pursuant to Rule 32.9(c) of the Arizona Rules of Criminal Procedure.” But neither court construed Baker’s claims as seeking Rule 32 relief. Although Judge Kearney agreed with the state that Baker’s claims were precluded under Rule 32 to the extent they “were the equivalent of a second Rule 32 motion,” she also determined that his “broader contention that denial of access to legal resources constitutes a due process violation presents a different question with respect to preclusion,” explaining that issues that fall outside Rule 32 “would not be precluded from consideration by other means.” Nor are Baker’s claims cognizable under Rule 32 because they do not implicate his conviction or sentence but, rather, concern only the alleged post-trial denial of his rights. *See* Ariz. R. Crim. P. 32.1. In any event, Baker

does not assert that Judge Kearney erred in determining he was not entitled to Rule 32 relief; he instead argues he is entitled to a writ of habeas corpus. We therefore deny review of Baker’s petition under Rule 32.9. To the extent he seeks relief from either court’s denial of habeas corpus or special action relief, we conclude we are without jurisdiction to consider those rulings.

¶7 As we have noted, both judges considered Baker’s claims as seeking habeas corpus relief. And, additionally construing Baker’s petition as seeking special action relief, Judge Fell declined to accept special action jurisdiction. A trial court’s rulings on such claims are reviewable via an appeal filed pursuant to our rules of civil appellate procedure—not by filing a petition for review pursuant to Rule 32.9. *See* Ariz. R. P. Spec. Actions 8(a) (“A decision of a Superior Court in a special action shall be reviewed by appeal. . . .”); A.R.S. § 12-2101(L) (“order or judgment made and entered on habeas corpus proceedings” appealable). Baker has not sought appellate review. And even if we construe his petitions for review as notices of appeal, neither was filed timely. We do not have jurisdiction to consider an untimely appeal. *See James v. State*, 215 Ariz. 182, ¶ 11, 158 P.3d 905, 908 (App. 2007).

¶8 Judge Fell entered his ruling in CR20042647 on July 7, 2010. Baker’s petition for review in that case was filed on September 14. Judge Kearney issued her ruling in CR20040488 on June 18, 2010, and Baker did not file his petition for review until September 26.<sup>2</sup> Both were filed well beyond the thirty-day limit to file a notice of

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<sup>2</sup>After Judge Kearney denied Baker’s motion for reconsideration, he requested on August 20 an extension of time to file his petition for review, which Judge Kearney

appeal. *See* Ariz. R. Civ. App. P. 9(a). Certain post-judgment motions extend the time for filing a notice of appeal pursuant to Rule 9(a). *See* Ariz. R. Civ. App. P. 9(b) (listing motions extending time for appeal). But we cannot reasonably conclude that Baker’s petitions for rehearing, again filed pursuant to Rule 32.9, would qualify as time-extending motions under the civil appellate procedure rules. *See James v. State*, 215 Ariz. 182, ¶ 16, 158 P.3d 905, 909 (App. 2007); *State ex rel. Corbin v. Tolleson*, 152 Ariz. 376, 380, 732 P.2d 1114, 1118 (App. 1986).

¶9 Finally, we cannot consider Baker’s petitions for review to be petitions for special action review of the trial courts’ decisions pursuant to A.R.S. §§ 12-2001 through 12-2007. *See also* Ariz. R. P. Spec. Actions 3. Our supreme court has made clear that an appellate court may not accept special action jurisdiction in order to review an appealable order when the party seeking review has permitted the time for appeal to expire. *State ex rel. Neely v. Rodriguez*, 165 Ariz. 74, 78, 796 P.2d 876, 880 (1990). Because Baker did

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granted. Although this extension was effective for a challenge to the ruling that he had failed to state a cognizable Rule 32 claim, the civil appellate rules do not permit a trial court to extend the time to file a notice of appeal except in circumstances not present here. *See* Ariz. R. Civ. App. P. 9(a). Given Judge Kearney’s references to Baker’s motion for rehearing as a motion made “under Rule 32.9(a)” and her grant of an extension under Rule 32.9, Baker’s decision to file a Rule 32.9 petition for review was somewhat understandable. But to preserve his right to review of decisions denying his habeas or special action claims, he was required to file a notice of appeal. And, despite Baker’s pro se status, he nonetheless is held to the same rules as an attorney. *State v. Cornell*, 179 Ariz. 314, 331, 878 P.2d 1352, 1369 (1994); *Old Pueblo Plastic Surgery, P.C. v. Fields*, 146 Ariz. 178, 179, 704 P.2d 819, 820 (App. 1985). None of the circumstances surrounding the trial courts’ decisions on Baker’s claims cure our lack of appellate jurisdiction or make his claims cognizable under Rule 32.

not timely appeal the courts' rulings, we lack subject matter jurisdiction to review them.

*Id.*

¶10 For the reasons stated, we deny review of Baker's petitions filed pursuant to Rule 32.9.

/s/ Philip G. Espinosa  
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Joseph W. Howard  
JOSEPH W. HOWARD, Chief Judge

/s/ J. William Brammer, Jr.  
J. WILLIAM BRAMMER, JR., Presiding Judge